

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges, which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d). (This is a GIL.)

December 15, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 26, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Company X ('X') is a business services company incorporated in STATE1. It will, for a fee, begin e-mailing third party advertisements (which will provide product or service information and, in substance, will state 'please contact company ABCD if you are interested in their product or service') to individuals throughout the nation. The e-mail advertisements, which will not violate any spam laws, will be sent either from a computer located in STATE2 or from a computer located in STATE1. It has not yet been determined which computer will serve as the off-site back-up and which will serve as the primary operational computer. My questions are as follows:

1. If X performs e-mail advertising services for a business located in your state, are there any sales, use, or excise taxes required to be collected/paid to your state? Are there any income or other taxes required to be paid to your state?
2. If X e-mails advertisements to residents in your state on behalf of a business located outside of your state, are there any sales, use, or excise taxes required to be collected/paid to your state? Are there any income or other taxes required to be paid to your state?

- .3. Would the answers to '1' and/or '2' above change if the e-mailing service is provided without charge (as a free trial offer) to potential X customers?
4. Would the choice of computer (STATE1 or STATE2) used to send the advertisements impact the tax consequences?

DEPARTMENT'S RESPONSE
(Sales, Use and Excise Tax only):

The Illinois Retailers' Occupation Tax (commonly known as sales tax) is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The seller's gross receipts from such sales made in the course of such business measure the tax. See 86 Ill. Adm. Code 130.101. Transactions which do not involve the sale of tangible personal property at retail are not subject to the Retailers' Occupation Tax.

In addition, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101.

The Telecommunications Excise Tax Act imposes a tax upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. Please see the enclosed copy of 86 Ill. Adm. Code Part 495. This tax must be collected from persons by retailers maintaining a place of business in Illinois and is then remitted directly to the Department by such retailers. See Section 495.110. Section 2(c) of the Act defines telecommunications," and states that this term does not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." Section (2)(a)(3) of the Act states that the term, "gross charge," which forms the basis for the tax, does not include "charges for leased time on equipment or charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content."

Generally, persons that provide subscribers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges, which are used to obtain access to the Internet, are not considered to be telecommunications retailers. See 86 Ill. Adm. Code 495.100(d). It is our general understanding that most Internet access providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunications providers all transmission costs that they incur in providing the service. Generally, the customers pay to their providers all transmission costs that they incur while using the service. The single monthly fee charged by such retailers, which often represents a flat charge for a package of items including Internet access, E-mail, electronic newsletters, templates for creating web sites, and other structures that customers can use to enter data onto an Internet format, would generally not be subject to the Telecommunications Excise Tax.

In general, the service of providing e-mail advertisements would not be subject to Retailers' Occupation Tax and Use Tax because the Department does not view this specific activity as a transfer of tangible personal property subject to tax under those Acts. The Department also does not consider such an activity to be subject to Telecommunications Excise Tax liability.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If

you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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